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Justice At Last - After 60 Years of Calls for Action, Government of Canada Delivers Specific Claims Tribunal Act

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OTTAWA, ON (June 18, 2008) - The *Specific Claims Tribunal Act* has received Royal Assent. The Honourable Chuck Strahl, Minister of Indian Affairs and Northern Development and Federal Interlocutor for Métis and Non-Status Indians, and B.C. Assembly of First Nations (AFN) Regional Chief A-in-chut (Shawn Atleo), today witnessed Governor General Michaëlle Jean officially approve the jointly developed legislation. The *Act* creates an independent tribunal with binding powers to resolve specific claims.

Her Excellency the Right Honourable Michaëlle Jean, Governor General of Canada, is joined by the Honourable Chuck Strahl, Minister of Indian Affairs and Northern Development and Federal Interlocutor for Metis and Non-Status Indians and Mr. Shawn Atleo, Assembly of First Nations Regional Chief, British Columbia, for the Royal Assent of the Specific Claims Tribunal Act, June 18, 2008.

"In just 12 months, our Government has achieved something that has been sought after for over 60 years," said Minister Strahl. "This historic legislation, which delivers on a commitment made in an action plan launched by the Prime Minister last June, will ensure specific claims are solved more quickly and fairly. We are the first government to create a tribunal whose work to resolve these claims will benefit not just First Nation people, but all Canadians."

"It was an honour to have been mandated to co-chair the joint task force charged with the unprecedented task of jointly developing with the federal government a faster and fairer process to settle hundreds of outstanding specific claims," said B.C. Assembly of First Nations Regional Chief A-in-chut (Shawn Atleo), "For decades First Nations have been seeking improvements to this process. I believe with this legislation we now have the potential to finally realize that goal."

The *Specific Claims Tribunal Act* includes separate three-year time lines for assessing and negotiating claims. If this time runs out, First Nations can take their claims to the tribunal for a binding decision. The tribunal, which will be made up of sitting superior court judges, can award compensation on claims worth up to $150 million.

The Government of Canada is also moving forward with the other practical measures to ensure greater transparency, faster processing and better access to mediation.

As work to establish the tribunal gets underway, the Government of Canada will continue to work with the AFN on the Liaison and Oversight Committee that was set up under a political agreement on specific claims reform.

These very necessary and overdue actions will improve and accelerate the resolution of specific claims in order to provide justice to First Nation claimants and certainty for all Canadians.

Fact Sheet: The Specific Claims Tribunal Act

For further information, please contact:

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The Specific Claims Tribunal Act

In June 2008, the *Specific Claims Tribunal Act* received Royal Assent. The legislation creates an independent tribunal to bring greater fairness to the way specific claims are handled in Canada while also accelerating the resolution of these claims. The tribunal is a key part of Canada's decisive new approach to improve and speed up the resolution of specific claims across the country, which is outlined in an action plan called *Specific Claims: Justice At Last*.

Main Elements of the Legislation

Developed jointly with the Assembly of First Nations, the legislation establishes a new independent body called the Specific Claims Tribunal. Although negotiations will always be the first choice, the tribunal will be able to make binding decisions where claims are rejected for negotiations or if negotiations fail. The creation of an independent tribunal was one of the main recommendations in the 2006 report of the Standing Senate Committee on Aboriginal Peoples on specific claims.

Under the legislation, there are three scenarios in which a First Nation can file a claim with the tribunal:

- if a claim has been rejected by Canada, including a scenario in which Canada fails to meet the three-year time limits for assessing claims;
- at any stage in the negotiation process if all parties agree; or,
- after three years of unsuccessful negotiations.

In all instances, this process will bring greater fairness to the process while accelerating the settlement of outstanding claims. The tribunal will look strictly at questions of fact and law to determine whether Canada has an outstanding lawful obligation under the *Act*. Where a claim is found to be valid, the tribunal will apply a rigorous process to establish how much monetary compensation is owed to the First Nation.

Decisions of the tribunal will not address claims valued at over $150 million, punitive damages, cultural and spiritual losses, or non-financial compensation. Participation by a province as a party before the tribunal is wholly voluntary. However, if a province chooses to participate as a party in a particular proceeding, it must certify that it will be bound by the tribunal's decision.

As noted above, the proposed legislation includes provisions that would complement the work of the tribunal by enforcing some time limits to improve Canada's internal processes. This accountability tool has never before been a part of the specific claims process and will help to significantly reduce the existing backlog in a timely fashion.

Tribunal Structure & Appointments

The independent tribunal will be made up of the equivalent of six full-time sitting superior court judges. Members of the tribunal will be drawn from the existing bench of experienced superior court judges in the provinces. These individuals are appointed in accordance with the current process for judicial appointments to courts and tribunals. The National Chief of the Assembly of First Nations will have a role in the recommendation process for the selection of tribunal judges. The tribunal will be supported by a registry office that will oversee its administrative affairs.

Accountability & Reporting

Once operational, the tribunal will issue annual reports to keep the government and all Canadians up to date on its activities. It will be accountable to Parliament for its expenditures as well as its operations. A review of its work will be initiated no later than five years from the date the legislation comes into force. This review process

will enable Canada and First Nations to assess the tribunal's effectiveness to ensure that it has met the expectations of all concerned.

Next Steps – Royal Assent to Coming into Effect

The *Specific Claims Tribunal Act* comes into effect 120 days after receiving Royal Assent on October 16, 2008. The following steps will be taken during this period of transition:

- judges to be selected to sit on the tribunal and a staffing process needs to be completed for its registry
- Canada-AFN Liaison & Oversight Committee to be created to continue joint efforts on specific claims reform as set out in the political agreement
- as part of its work, the Canada-AFN Committee to develop minimum standard for claims submissions and recommendations about the tribunal's rules and procedures
- the tribunal to develop its own set of rules and procedures
- Canada will conduct an information campaign to explain the new process to First Nations and other Canadians.

Quick Facts on Specific Claims:

- Specific claims deal with the past grievances of First Nations. These grievances relate to Canada's obligations under historic treaties or the way it managed First Nation funds or other assets, including reserve land.
- Canada completes an assessment of the facts of each claim to determine whether it owes a lawful obligation to a First Nation. If the claim is accepted, Canada negotiates a settlement with the First Nation and (where applicable) the province or territory. In the past, about 70 per cent of claims are accepted.
- If a claim is rejected by Canada, a First Nation may choose to take the claim to the tribunal for a binding decision.
- The Government of Canada prefers to resolve claims by negotiating settlements with First Nations. Most negotiations are successful – 90 percent of the specific claims that are negotiated result in final settlements. In contrast to litigation, negotiated settlements are jointly developed by the parties working together to ensure fairness for all.
- The interests of third parties are taken into account during the negotiations. Private property is not on the table. If land changes hands, this can only happen on a willing-seller/willing buyer basis. The tribunal can only award monetary compensation. However, as with negotiated settlements, First Nations can still use settlement funds to purchase land on the open market.
- Since 1973, about 300 specific claims have been resolved through negotiated settlements. Canada's contribution to these settlements has ranged in value from $15,000 to $125 million, with an average settlement value of $6.5 million. At present, 131 specific claims are under negotiation.

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